

UNITED STATES
DEPARTMENT OF
AGRICULTURE

KANSAS CITY
COMMODITY OFFICE
P.O. BOX 419205
KANSAS CITY, MO 64141-6205

EFFECTIVE: March 1, 2001

ANNOUNCEMENT CR2

**PURCHASE OF
CRACKERS
FOR USE IN DOMESTIC PROGRAMS**



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CRACKERS

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**ANNOUNCEMENT CR2
PURCHASE OF CRACKERS
FOR USE IN DOMESTIC PROGRAMS**

1. GENERAL

A. Invitation for Offers

- (1) The United States Department of Agriculture (USDA) will from time to time issue an invitation for offers under this announcement to sell crackers (hereinafter referred to as crackers or product) to USDA for use in domestic programs.
- (2) The invitation will specify the office to which offers are to be submitted, the closing time for receipt of offers, and provisions applicable to the proposed procurement which are in addition to or different from those set forth herein.

B. Terms and Conditions

- (1) Provisions of "General Terms and Conditions for the Procurement of Agricultural Commodities or Services," USDA-1, Revision No. 2, as amended (USDA-1), are incorporated as specified in Section 6 of this announcement.
- (2) Offerors are cautioned to read all terms and conditions of USDA-1, TQSA Supplier Guidelines, this announcement, the appendixes to this announcement, and the invitation.

C. Certifications, Representations, and Warranties

Appendix 1 to this announcement contains certifications, representations, and warranties that must be certified and submitted annually to USDA prior to or with an offer. In addition to an annual submission, offerors must submit an updated Appendix 1 as changes in the certifications, representations, and warranties submitted to USDA occur throughout the year.

D. Commercial Item Description

Appendix 2 to this announcement is the Commercial Item Description (CID) for **CRACKERS, A-A-20286, dated June 15, 1998.**

2. ELIGIBILITY OF OFFERORS

To be eligible to submit an offer under this announcement, the offeror must:

- A. Submit a completed "Solicitation Mailing List Application" (Standard Form 129) to the contracting officer prior to a first offer. Offeror must complete all portions of form SF-129, except Item 18, and include the following additional information for:
 - (1) Item 8. Identify all affiliates including any parent company. Provide full name and main office address. A "parent" company is one that owns or controls the activities and basic business policies of the bidder. An "affiliate" is defined on the back of the form.
 - (2) Item 10. Identify the commodities/products the offeror is interested in supplying.
 - (3) Items 19 and 20. Must be an officer of the company.
- B. Offerors must resubmit form SF-129 as necessary when the information requires updating.
- C. Affirmatively demonstrate responsibility as defined in Federal Acquisition Regulation (FAR) 9.104-1. USDA may request a pre-award survey for the purpose of evaluating the offeror's ability to perform the contract.
- D. Meet the definitions of a manufacturer or nonmanufacturer as defined below:
 - (1) Manufacturer means a person that owns, operates, or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
 - (2) Nonmanufacturer means a person that is primarily engaged in the wholesale or retail trade and normally sells the items being supplied to the general public, and will supply the end item of a small business manufacturer or processor made in the United States, or obtain a waiver of such requirement pursuant to 13 C.F.R. 121.406.
- E. Maintain a bona fide business office in the United States for the purpose of selling to USDA the product described in this announcement. Additionally, the offeror must maintain an office, employee, or agent for service of process.
- √.. F. Meet the requirements of the Total Quality Systems Audit (TQSA) program. Offerors shall only be allowed to offer from plants that have been audited under TQSA and have received a score of at least 80 points. However, a result of "0" in any element of the TQSA Report Form TQ-003 would preclude participation in the commodity purchase programs until such time corrective action is implemented and verified as effective. (Element scoring: 0 = one (or more) questions with a result of "0", or four or more questions with a result of "M".) Total Quality Systems Audit Supplier Guidelines setting forth the TQSA requirements may be obtained at the Internet location www.fsa.usda.gov/pdd/tqsa.htm or by contacting the appropriate Contracting Officer at 816-926-6064...√

3. SUBMISSION OF OFFERS

A. How to Submit Offers

Offers, modifications, withdrawals of offers, and price adjustments shall be submitted through the Domestic Electronic Bid Entry System (DEBES) and received by the date and local time specified in the invitation for receipt of offers. The time of receipt will be determined and recorded by DEBES. Submission of the above by any means other than DEBES will be determined nonresponsive.

B. Computer Software Requirements

The contractor is responsible for choosing their own Internet Service Provider (ISP) to transmit, translate, or carry data between the offeror and this office. The offeror is responsible for the cost of its third-party network.

- (1) Browser requirement: Netscape 4.07 or above **(OR)** Internet Explorer 5.0 or above.
- (2) Encryption: Browser capable of handling 128-bit encryption.
- (3) Proxy servers: Offerors must set up their proxy server to allow access to the Internet DEBES port.

C. Access to DEBES

- (1) Port location is: <https://pcsd.usda.gov:3077/mdbc1000.exe?>
- (2) This office will provide the offeror with an ID number and the initial password needed to access DEBES.
- (3) USDA will not be responsible for any failure attributed to the transmission of the bid data prior to being accepted and stored on our web server including, but not limited to the following:
 - (a) Any failure of the offeror's computer hardware or software.
 - (b) Availability of your Internet service provider.
 - (c) Delay in transmission due to the speed of your modem.
 - (d) Delay in transmission due to excessive volume of Internet traffic.

- (4) DEBES offer form bid page. The Trans (transportation) Mode on the DEBES offer form bid page will default to truck. Offerors may select the rail or piggyback mode for each item if applicable. Offerors designated mode of transportation will become a contract requirement and may not change without prior approval from this office.

D. Late Submission and Modification

Any offer submitted to DEBES after the designated time specified for receipt in the invitation will not be considered. Notwithstanding the above, a late modification of an otherwise successful bid that makes its terms more favorable to the government will be considered at any time it is received and may be accepted. For the purpose of this announcement, USDA-1, Articles 6 and 7 are excluded.

E. Basis of Offer

Offers are invited f.o.b. destination. Certain destinations require delivery by TRUCK ONLY or RAIL ONLY. Destinations asterisked together in the invitation indicate carlot combinations, and offers are requested for delivery to all points indicated in the combination. Offerors may rearrange destination sequence on carlot combinations provided the offer is for all parts of the carlot combination. A single price shall be offered for each item. Offers for less than quantity requested per item will not be accepted. **USE OF OPEN VAN CARRIERS IS NOT ALLOWED.**

4. ACCEPTANCE OF OFFERS

- A. USDA will notify successful offerors on the date specified in the invitation. The date of acceptance by USDA will be the contract date.
- B. In addition to the price, factors considered in accepting offers will include the time of shipment, the total cost to the Government to deliver the product to the ultimate destination, and the responsibility of the offeror as demonstrated by prior contract performance.
- C. USDA may accept or reject any or all offers, or portions thereof.

5. RESPONSIBILITY AND PAST PERFORMANCE OF OFFEROR

- A. Offerors are cautioned not to bid on product quantities exceeding a level that the offeror can reasonably expect to deliver in accordance with the contract schedule. Deliveries must be made during the contracted delivery period and no extensions will be granted due to weekends or Federal holidays. On time delivery is imperative because this product is used in domestic food programs. Late deliveries cause serious and substantial damages to USDA and to other agencies that use this commodity. Contractor delivering late on contracts must immediately notify the contracting officer of late deliveries and how soon delivery can be expected.

- B. The offeror must certify to timely performance on current contracts on the DEBES certification form. A determination that the late performance is beyond the control or negligence of the contractor will be made by the contracting officer prior to bid opening. An offeror may be deemed nonresponsible if the offeror is delivering late on contracts with USDA and the late delivery is not due to causes beyond the contractor's control. This provision, as it pertains to small business, is a deviation from FAR 9.103(b) and Subpart 19.6.

6. PROVISIONS OF CONTRACT

- A. The contract consists of:
- (1) Contractor's offer.
 - (2) USDA's acceptance.
 - (3) The applicable invitation.
 - (4) This announcement, including Appendixes 1-2.
 - (5) TQSA Supplier Guidelines.
 - (6) USDA-1, except Articles 50 and 55 and all of Part E. Articles 56, 65, and 67 are applicable, except that contracts will be executed on a delivery basis. All words referring to "ship," "shipping," "shipments," and "shipped" shall be "deliver," "delivering," "delivery(ies)," and "delivered."
- B. If the provisions of USDA-1, TQSA Supplier Guidelines, and this announcement are not consistent, the provisions of this announcement will prevail. If the provisions of USDA-1, TQSA Supplier Guidelines, this announcement, and the invitation are not consistent, those of the invitation will prevail.
- C. No interpretation or amendment of this announcement is valid or enforceable unless such interpretation or amendment is in writing and executed by the contracting officer.

7. NAICS CODE AND SMALL BUSINESS SIZE STANDARD

- A. The North American Industry Classification System (NAICS) code for this acquisition and the small business size standard is:

COMMODITY	NAICS CODE	SIZE STANDARD (EMPLOYEES)
Crackers	311812	750

- B. The small business size standard for a concern which submits an offer in its own name, but which proposes to furnish a product which it did not itself manufacture is 500 employees.

- C. The U.S. Small Business Administration (SBA) has implemented the Procurement Marketing and Access Network (PRO-Net). PRO-Net is a procurement related Internet-based electronic search engine for locating small, small disadvantaged, and women-owned small business sources. The PRO-Net Internet address (URL) is (<http://pro-net.sba.gov>).

Companies that do not have access to the Internet may register for PRO-Net through your local SBA office. The PRO-Net is a free electronic gateway linked to the Commerce Business Daily, government agency home pages, and other sources of procurement opportunities.

8. RESPONSES TO ILLEGAL OR IMPROPER ACTIVITY

A. Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity

- (1) If the Government receives information that a contractor or a person has engaged in conduct constituting a violation of subsection (a), (b), (c), or (d) of Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) (the Act), as amended by section 4304 of the 1996 National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104-106), the Government may:
 - (a) Cancel the solicitation, if the contract has not yet been awarded or issued; or
 - (b) Rescind the contract with respect to which:
 - 1) The contractor or someone acting for the contractor has been convicted for an offense where the conduct constitutes a violation of subsection 27 (a) or (b) of the Act for the purpose of either:
 - a) Exchanging the information covered by such subsections for anything of value; or
 - b) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or
 - 2) The head of the contracting activity has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsections 27(e)(1) of the Act.
- (2) If the Government rescinds the contract under paragraph A. (1) of this clause, the Government is entitled to recover, in addition to any penalty prescribed by law, the amount expended under the contract.
- (3) The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law, regulation, or under this contract.

B. Price or Fee Adjustment for Illegal or Improper Activity

- (1) The Government, at its election, may reduce the price of a fixed-price type contract and the total cost and fee under a cost-type contract by the amount of profit or fee determined as set forth in paragraph B. (2) of this clause if the head of the contracting activity or designee determine that there was a violation of subsection 27 (a), (b), or (c) of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 423), as implemented in section 3.104 of the Federal Acquisition Regulation.
- (2) The price or fee reduction referred to in paragraph B. (1) of this clause shall be:
 - (a) For cost-plus-fixed-fee contracts, the amount of the fee specified in the contract at the time of award;
 - (b) For cost-plus-incentive-fee-contracts, the target fee specified in the contract at the time of award, notwithstanding any minimum fee or "fee floor" specified in the contract;
 - (c) For cost-plus-award-fee contracts:
 - 1) The base fee established in the contract at the time of contract award;
 - 2) If no base fee is specified in the contract, 30 percent of the amount of each award fee otherwise payable to the contractor for each award fee evaluation period or at each award fee determination point.
 - (d) For fixed-price-incentive contracts, the Government may:
 - 1) Reduce the contract target price and contract target profit both by an amount equal to the initial target profit specified in the contract at the time of contract award; or
 - 2) If an immediate adjustment to the contract target price and contract target profit would have a significant adverse impact on the incentive price revision relationship under the contract, or adversely affect the contract financing provisions, the contracting officer may defer such adjustment until establishment of the total final price of the contract. The total final prices established in accordance with the incentive price revision provisions of the contract award and such reduced price shall be the total final contract price.
 - (e) For firm-fixed-price contracts, by 10 percent of the initial contract price or a profit amount determined by the contracting officer from records or documents in existence prior to the date of the contract award.
- (3) The Government may, at its election, reduce a prime contractor's price or fee in accordance with the procedures of paragraph B. (2) of this clause for violations of the Act by its subcontractors by an amount not to exceed the amount of profit or fee reflected in the subcontract at the time the subcontract was first definitively priced.

- (4) In addition to the remedies in paragraphs B. (1) and B. (3) of this clause, the Government may terminate this contract for default. The rights and remedies of the Government specified herein are not exclusive, and are in addition to any other rights and remedies provided by law or under this contract.

9. PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED, OR PROPOSED FOR DEBARMENT

- A. The Government suspends or debars contractors to protect the Government's interests. Contractors must not enter into any subcontract equal to, or in excess of, the small purchase limitation of \$25,000 with a contractor that has been debarred, suspended, or proposed for debarment unless the acquiring agency's head or designee determines there is a compelling reason for such action (FAR 9.405).
- B. The contractor must require each proposed first-tier subcontractor, whose subcontract shall exceed the small purchase limitation of \$25,000, to disclose to the contractor, in writing, whether as of the time of award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the Federal Government.
- C. A corporate officer or a designee of the contractor must notify the contracting officer, in writing, before entering into a subcontract with a party that is debarred, suspended, or proposed for debarment (See FAR 9.404 for information on the List of Parties Excluded from Federal Procurement Programs). The notice must include the following:
 - (1) The name of the subcontractor;
 - (2) The contractor's knowledge of the reasons for the subcontractor being on the List of Parties Excluded from Federal Procurement Programs;
 - (3) The compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded from Federal Procurement Programs;
 - (4) The systems and procedures the contractor has established to ensure that it is fully protecting the Government's interests when dealing with such subcontractor in view of the specific basis for the party's debarment, suspension, or proposed debarment.

10. COMMODITY SPECIFICATIONS

- A. Domestic Origin
 - (1) The product delivered under this announcement must be produced in the United States from commodities produced in the United States.
 - (2) For purposes of this section, the following definition applies:

"Produced in the United States" means manufactured, processed, mined, harvested, or otherwise prepared for sale or distribution, from components originating in the United States. Components originating in the United States which have been exported, and subsequently imported back into the United States, will not be considered as having been produced in the United States.

- (3) The contractor must maintain records to verify that during the contract delivery period, at the point of packaging or, at the point of delivery to USDA, the product, containers and packaging materials were in compliance with the domestic origin requirements of this section of the announcement. (See Article 76 of USDA-1)
- (4) USDA will randomly conduct domestic origin compliance reviews to determine if the product delivered to USDA was produced and manufactured in the U.S. from materials produced and manufactured in the U.S. Upon request, the contractor must submit documentation substantiating compliance to the contracting officer for review. This documentation may include procurement, production, inventory, delivery, and any other pertinent records. Onsite reviews may also be performed, at the discretion of USDA.

B. Commercial Product Specifications

- (1) Contractors are to supply commercial labeled products only. Contractors must certify and fully demonstrate that the product being delivered has a history of successful distribution and use in domestic commercial channels, and is sold on the commercial marketplace with an established level of consumer acceptance prior to the initial bid. The product delivered shall comply with all applicable Federal and State mandatory requirements and regulations relating to the preparation, processing, packaging, labeling, storage, distribution and sale within the commercial marketplace.
- (2) The product must conform in every respect to the provisions of the “Federal Food, Drug, and Cosmetic Act,” as amended, and the regulations promulgated thereunder, including any Defect Action Level guidelines issued by the Food and Drug Administration (FDA) which may be applicable to this product. Any product with counts in excess of the FDA Defect Action Level guidelines shall not be shipped.
- (3) Commercial brand crackers must comply with Commercial Item Description A-A-20286, dated June 15, 1998 (see Appendix 2).
- (4) Warranty. The crackers must have a shelf life of at least six months from date of manufacture. Product must not be manufactured more than 30 days prior to shipping. Contractor must replace defective commodity with an equal quantity of commodity which conforms to all contract requirements and specifications, provided replacement is agreed to by USDA.
- (5) The product delivered must comply with the domestic origin requirements as specified in Section 10, paragraph A.

- C.** Subject to the provisions of Articles 60 and 68 of USDA-1, product which deviates from the specifications of this contract will be rejected.

11. COMMERCIAL PACKAGING AND MARKING SPECIFICATIONS

- A. Container and packaging requirements for commercial products are those used in the current commercial shipping practices and must comply with the following unitization requirements:
- (1) Unless otherwise specified by USDA, all shipments of packaged products must be unitized (palletized and stretch wrapped).
 - (2) Pallets must be:
 - (a) Constructed to facilitate the safe handling, stacking, and transportation of the packaged product, as a unit, without loss or damage.
 - (b) 48 x 40 inches, four-way or partial four-way, and reversible or nonreversible flush stringer.
 - (c) Suitable for use in the shipment of food products.
 - (3) Plastic stretch wrap must be:
 - (a) Constructed of a plastic film which is to be stretched a minimum of 50 percent beyond its original length when stretched around the pallet load.
 - (b) Applied as tightly as possible around all tiers of the palletized shipping containers. The shipping containers must be held firmly in place by the stretch wrap.
 - (4) Pallet loads must be:
 - (a) Stacked in such a way as to minimize the amount that shipping containers overhang the edges of pallets. (While shipping containers may overhang the edges of pallets, contractors are reminded that they are responsible for the safe shipment and delivery of the product.)
 - (b) Blocked and braced or otherwise loaded into the conveyance in a manner that prevents shifting during transit.
- B. The marking and labeling for commercial products must be in accordance with good commercial practices.
- C. At contractor's option a statement such as "NOT FOR RETAIL SALE" may be printed on the principal display panel of the food label.
- D. The manufacturer's lot code/lot identification number must be shown on the commercial bill of lading.
- E. All containers and packaging materials must be manufactured and assembled in the United States. The components that make up the fabricating materials of the containers and packaging materials must be of U.S. origin to the extent that they are commercially available.

12. QUALITY ASSURANCE

- A. The contractor must perform the product testing and quality analysis to ensure that the product meets the specifications described in Section 10 B. The results must be evidenced by a Certificate of Analysis. The contractor must retain the Certificates of Analysis and furnish to USDA upon request. Contractors are required to notify KCCO immediately of lots that fail to meet contract requirements.
- B. Contractor must not ship the product unless the containers and markings meet the Acceptable Quality Level (AQL) of the "U.S. Standards for Condition of Food Containers." Except with respect to shipments that do not meet the AQL standards, and notwithstanding Article 56(b) of USDA-1, contractor assumes all risks and liabilities that arise with respect to the failure of the shipped product to meet contract specifications.
- C. The TQSA program is a method of contractor verification and shall not relieve contractors of their responsibility to deliver a product which complies with all contractual and specification requirements.
- D. If the contractor becomes TQSA non-compliant after the contract is awarded and through execution of contract, the contracting officer may terminate contract for default.

13. SHIPMENT AND DELIVERY

- A. Shipment and delivery must be made in accordance with this announcement and Articles 56 and 64 of USDA-1.
- B. Title and risk of loss will pass to USDA on the date of delivery, as evidenced by a signed and dated consignee's receipt, warehouse receipt, dock receipt, or other similar document acceptable to USDA.
- C. The quantity of the product delivered in good condition must be evidenced by a signed and dated consignee's receipt, warehouse receipt, dock receipt, or other similar document acceptable to USDA, and such document must be retained by the contractor.
- D. Contractors are required to make **TWO** notifications for each shipment (See Article 56(c) of USDA-1):
 - (1) The State Agency, "Consign To" party shown on the Notice to Deliver (N/D), must be **FAXED** on day of shipment.
 - (2) The receiving warehouse, "Care Of" party shown on the N/D, must be called 24 hours in advance to schedule an unloading appointment. (This is not required for rail shipments.) Contractors must notify the contracting officer in advance if deliveries will not be made by the final delivery date under the contract, in accordance with Article 67(a) of USDA-1.

- E. Consignees may request upgrading of delivery service; for example, delivery within the doors of the consignee's premises or to a specific room within a building. Contractors are alerted that such delivery terms are beyond contractual requirements. If an upgrade of delivery services is requested and agreed to, additional charges must be billed to the party requesting the service.

14. LIQUIDATED DAMAGES

A. Compensation to Contractor for Late Issuance of Notice to Deliver

Liquidated damages for delay in delivery due to late issuance of "Notice to Deliver" (KC-269), will be payable in accordance with Article 65 of USDA-1, and will be at the rate of \$0.30 per 100 pounds (net weight) per day.

B. Compensation to USDA for Delay in Delivery

Liquidated damages for delay in delivery will be payable in accordance with Article 67 of USDA-1, and will be at the rate of \$0.30 per 100 pounds (net weight) per day.

15. INVOICES AND PAYMENT

- A. Invoicing and payment will be handled in accordance with Article 70, USDA-1 except that a properly prepared invoice package must include the following supporting documents:

- (1) A signed and dated Form KC-269 (reverse side) which includes the "Contractor's Invoice Certification" evidencing the date of delivery and quantity (units) delivered in good condition, OR
- (2) A signed and dated commercial invoice evidencing the date of delivery and quantity (units) delivered in good condition which must include the following statement (either as a part of the commercial invoice or an attachment to):

"Contractor's Invoice Certification"

"I certify that this invoice presented for payment is true. This certification is executed with full knowledge of the provision of 15 U.S.C. 714m(a), which provides a fine of not to exceed \$10,000 or imprisonment of not more than five years or both, for making any statement knowing it to be false, for the purpose of influencing in any way the action of the United States Department of Agriculture, and with full knowledge of the provisions of 31 U.S.C. 3729 imposing civil liability upon any person who shall make or cause to be made a false, fictitious, or fraudulent claim against the United States."

Authorized signature

Date

- (3) Commercial bill of lading.

(4) If the contractor does not complete a "Contractor's Invoice Certification," then proof of delivery as evidenced by one or more of the following documents will be required as part of the invoice package:

(5) A copy of the Bill of Lading signed and dated by the recipient.

(6) A copy of the commercial receipt evidencing delivery signed and dated by the recipient.

B. Invoices must be mailed to:

Kansas City Finance Office
Financial Operations Division, Payment Certification Branch
Stop Code 8578
P.O. Box 419205
Kansas City, MO 64141-6205

C. The Debt Collection Improvement Act of 1996 amended 31 U.S.C. 3332 to require Federal agencies to convert all Federal payments from checks to electronic fund transfers. Payments may be made directly to a financial banking institution. To receive payments electronically, Standard Form 3881, ACH Vendor/Miscellaneous Payment Enrollment Form must be completed. If you have questions or would like these forms mailed to you, contact Financial Operations Division, Payment Certification Branch.

16. INQUIRIES

Inquiries pertaining to USDA-1 and this announcement should be directed to:

Kansas City Commodity Office
Dairy and Domestic Operations Division
Stop Code 8718
P.O. Box 419205
Kansas City, MO 64141-6205

George W. Aldaya
Director
Kansas City Commodity Office

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EFFECTIVE: January 1, 2004

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APPENDIX 1

Representations, Certifications, and Other Statements of Offerors or Respondents for

DOMESTIC COMMODITY PROCUREMENTS

<http://www.fsa.usda.gov/daco/Announcement/Domestic/Appendix1.pdf>



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APPENDIX 2

Commercial Item Description Crackers

ANNOUNCEMENT CR2

A-A-20286 dated June 15, 1998

<http://www.ams.usda.gov/fqa/cidbread.htm>

